

POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(b).

I hereby appoint:

Practitioners associated with the Customer Number:
OR

69849

Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used):

Name	Registration Number	Name	Registration Number

as attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent applications assigned only to the undersigned according to the USPTO assignment records or assignment documents attached to this form in accordance with 37 CFR 3.73(b).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(b) to:



The address associated with Customer Number:

69849

OR

<input type="checkbox"/> Firm or Individual Name			
Address			
City		State	Zip
Country			
Telephone	Email		

Assignee Name and Address:

Jellycloud (assignment for the benefit of creditors), LLC
1100 La Avenida Street
Mountain View, California 94043

A copy of this form, together with a statement under 37 CFR 3.73(b) (Form PTO/SB/96 or equivalent) is required to be filed in each application in which this form is used. The statement under 37 CFR 3.73(b) may be completed by one of the practitioners appointed in this form if the appointed practitioner is authorized to act on behalf of the assignee, and must identify the application in which this Power of Attorney is to be filed.

SIGNATURE of Assignee of Record

This individual whose signature and title is supplied below is authorized to act on behalf of the assignee

Signature		Date	11/12/08
Name	Michael A. Maidy	Telephone	650-329-9996
Title	Manager		

This collection of information is required by 37 CFR 1.31, 1.32 and 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "CLARIA CORPORATION", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF APRIL, A.D. 2008, AT 6:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



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You may verify this certificate online
corp.delaware.gov/authver.shtml

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6523090

DATE: 04-14-08

RESTATE
CERTIFICATE OF INCORPORATION

OF
CLARIA CORPORATION

The undersigned, Scott VanDeVelde, hereby certifies that:

1. He is the duly elected and acting President and Chief Executive Officer of Claria Corporation, a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware under the name "eGuard, Inc." on July 17, 1998, and amended and restated and filed with the Delaware Secretary of State on March 23, 1999, and amended and restated and filed with the Secretary of State of Delaware on April 22, 1999, and amended and filed with the Secretary of State of Delaware on April 28, 1999 under the name "Gator.com Corporation", and amended and restated and filed with the Secretary of State of Delaware on November 30, 1999, and amended and restated and filed with the Secretary of State of Delaware on February 22, 2000, and amended and restated and filed with the Secretary of State of Delaware on March 28, 2000, and amended and filed with the Secretary of State of Delaware on June 26, 2001 under the name "The Gator Corporation", and amended and filed with the Secretary of State of Delaware under the name "Claria Corporation" on October 22, 2003.
3. The Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is JellyCloud, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 2711 Centreville Road, Suite, 400, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

(A) **Classes of Stock.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is Two Hundred Nine Million Four

Hundred Ninety Three Thousand Forty Eight (209,493,048) shares, each with a par value of \$0.0001 per share. One Hundred Twenty Three Million Four Hundred Eighty Seven Thousand Five Hundred Ninety Seven (123,487,597) shares shall be Common Stock and Eighty Six Million Five Thousand Four Hundred Fifty One (86,005,451) shares shall be Preferred Stock.

(B) **Rights, Preferences and Restrictions of Preferred Stock.** The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one or more series. The first series of Preferred Stock shall be designated "Series A Preferred Stock" and shall consist of One Million One Hundred Twenty Five Thousand (1,125,000) shares. The second series of Preferred Stock shall be designated "Series B Preferred Stock" and shall consist of Four Million One Hundred Seventy Six Thousand and One (4,176,001) shares. The third series of Preferred Stock shall be designated "Series C Preferred Stock" and shall consist of Eight Million Three Hundred Ninety Six Thousand Eighty Two (8,396,082) shares. The fourth series of Preferred Stock shall be designated "Series D Preferred Stock" and shall consist of Five Million Eight Hundred and Eleven Thousand Nine Hundred and Four (5,811,904) shares. The fifth series of Preferred Stock shall be designated "Series E Preferred Stock" and shall consist of Four Million Seven Hundred Forty Six Thousand Four Hundred and Sixty Four (4,746,464) shares. The sixth series of Preferred Stock shall be designated "Series A-1 Preferred Stock" and shall consist of Sixty One Million Seven Hundred Fifty Thousand (61,750,000) shares. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series A-1 Preferred Stock are as set forth below in this Article IV(B).

1. **Dividend Provisions.** Subject to the rights of any series of Preferred Stock which may from time to time come into existence, the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock shall be entitled pari passu to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation) on the Common Stock of the Corporation, at the rate of \$0.016 per share per annum on each outstanding share of Series A Preferred Stock, \$0.048 per share per annum on each outstanding share of Series B Preferred Stock, \$0.124 per share per annum on each outstanding share of Series C Preferred Stock, \$0.64 per share per annum on each outstanding share of Series D Preferred Stock, \$0.68 per share per annum on each outstanding share of Series E Preferred Stock and \$0.01944 per share per annum on each outstanding share of Series A-1 Preferred Stock, payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

2. **Liquidation.**

(a) **Preference.**

(i) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary ("Deemed Liquidation"), and subject to the rights of any series of Preferred Stock that may from time to time come

into existence, the holders of Series A-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock or Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock, by reason of their ownership thereof, an amount per share equal to the sum of (A) \$0.243 per share for each share of Series A-1 Preferred Stock (the "Original Series A-1 Issue Price"), plus (B) any declared but unpaid dividends. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of Series A-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of Series A-1 Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive under this subsection (a)(i).

(ii) Upon the completion of the distribution required by Section 2(a) above and any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence, the remaining assets of the Corporation available for distribution to stockholders shall be distributed as set forth in subsections (A), (B) and (C) as follows on a *pari passu* basis:

(A) the holders of Series A-1 Preferred Stock shall be entitled to receive an amount per share equal to the quotient obtained by dividing the Series A-1 Allocation Amount (as defined below) by the number of shares of Series A-1 Preferred Stock then outstanding. For purposes of this Restated Certificate of Incorporation, the "Series A-1 Allocation Amount" shall equal the product obtained by multiplying the amount of such distribution by the percentage obtained by dividing (x) the number of shares of Common Stock issuable upon conversion of all shares of Series A-1 Preferred Stock, by (y) the number of shares of Common Stock of the Corporation then outstanding, including all shares of Common Stock issuable upon exercise, conversion or exchange of Options or Convertible Securities then outstanding (excluding, for the avoidance of doubt, any shares of Common Stock reserved for issuance pursuant to the Corporation's stock option plans) (the "Fully Diluted Shares"). For purposes of this Restated Certificate of Incorporation, "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities; and "Convertible Securities" shall mean any evidence of indebtedness, shares or other securities directly or indirectly convertible into, or exercisable or exchangeable for, Common Stock;

(B) if the Deemed Liquidation is a Change of Control (as defined below), a Management Retention Plan as adopted by the Board of Directors prior to the date of this Restated Certificate of Incorporation, and as amended from time to time with the approval of participants in the Management Retention Plan as set forth therein (the "Management Retention Plan") (and for so long as such Management Retention Plan shall remain in effect) shall be allocated a percentage of such distribution (for further distribution to the participants in the Management Retention Plan pursuant to the terms and conditions of the Management Retention Plan) equal to the percentage obtained by dividing (x) the number of shares of Common Stock (including

shares of Common Stock issuable upon exercise of outstanding options to purchase Common Stock) held by all the participants in the Management Retention Plan immediately prior to the consummation of the Deemed Liquidation, by (y) the number of Fully Diluted Shares. The Management Retention Plan shall only be distributed assets of the Corporation if distributions are made to any holders of any Prior Preferred Stock, and only until such time as such holders of such Prior Preferred Stock shall have received their applicable Prior Preferred Cap, and after such time distributions to the Management Retention Plan shall cease; and

(C) the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock (collectively, the "Prior Preferred Stock") shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership thereof, the remaining percentage of such remaining assets of the Corporation until each such holder has received, pursuant to this subsection (C), an amount per share equal to (i) \$0.20 per share for each share of Series A Preferred Stock then held by them; (ii) \$0.60 per share for each share of Series B Preferred Stock then held by them, (iii) \$1.55 per share for each share of Series C Preferred Stock then held by them, (iv) \$8.00 per share for each share of Series D Preferred Stock then held by them, and (v) \$8.48 per share for each share of Series E Preferred Stock then held by them, plus any declared but unpaid dividends (subsections (i) through (v), the "Prior Preferred Cap"); and at such time all further distributions pursuant to subsections (A) and (B) above also shall cease. If the assets and funds thus distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock pursuant to this subsection (C) shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, subject to the rights of any series of Preferred Stock that may from time to time come into existence, the entire assets and funds of the Corporation legally available for distribution and to be distributed pursuant to this subsection (C) shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) **Remaining Assets.** Upon the completion of the distribution required by Sections 2(a)(i) and (ii) above and any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series A-1 Preferred Stock and the Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock) until (i) with respect to the holders of Series A Preferred Stock, such holders shall have received an aggregate of \$0.30 per share of Series A Preferred Stock (including amounts paid pursuant to Section 2(a)(ii)(C) above), (ii) with respect to the holders of Series B Preferred Stock, such holders shall have received an aggregate of \$0.90 per share of

Series B Preferred Stock (including amounts paid pursuant to Section 2(a)(ii)(C) above), (iii) with respect to the holders of Series C Preferred Stock, such holders shall have received an aggregate of \$2.325 per share of Series C Preferred Stock (including amounts paid pursuant to Section 2(a)(ii)(C) above), (iv) with respect to the holders of Series D Preferred Stock, such holders shall have received an aggregate of \$12.00 per share of Series D Preferred Stock (including amounts paid pursuant to Section 2(a)(ii)(C) above); and (v) with respect to the holders of Series E Preferred Stock, such holders shall have received an aggregate of \$12.72 per share of Series E Preferred Stock (including amounts paid pursuant to Section 2(a)(ii)(C) above); thereafter, subject to the rights of any series of Preferred Stock that may from time to time come into existence, if assets remain in the Corporation, the holders of the Common Stock and Series A-1 Preferred Stock of the Corporation shall receive all of the remaining assets of the Corporation pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series A-1 Preferred Stock). All dollar amounts referenced in Sections 2(a) and 2(b) shall be subject to adjustment for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock.

(c) **Certain Acquisitions.**

(i) **Deemed Liquidation.** For purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to occur if the Corporation shall sell, lease, transfer, convey, or otherwise dispose of or encumber all or substantially all of its property or business or merge into or consolidate with any other Corporation (other than a wholly-owned subsidiary corporation) or effect any other transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of (a "Change of Control"), provided that this Section 2(c)(i) shall not apply to (x) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (y) a merger or consolidation in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of the Corporation or the surviving or acquiring entity, or (z) a bona fide equity financing, including without limitation the sale of Series A-1 Preferred Stock.

(A) The Corporation shall not have the power to effect a Deemed Liquidation referred to in this Section 2(c)(i) unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a) and 2(b) above.

(B) The amount deemed paid or distributed to the holders of capital stock in accordance with Section 2 shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity.

(ii) **Valuation of Consideration.** In the event of a deemed liquidation as described in Section 2(c)(i) above, if the consideration received by the Corporation or its stockholders is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to an investment letter or other similar restrictions on free marketability:

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to an investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(c)(ii)(A) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iii) **Notice of Transaction.** The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iv) **Effect of Noncompliance.** In the event the requirements of this Section 2(c) are not complied with, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 2(c)(iii) hereof.

3. **Redemption.** The Preferred Stock is not redeemable.

4. **Conversion.** The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right to Convert.** Subject to Section 4(c), each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing: (i) \$0.20 by the Conversion Price applicable to such share for Series A Preferred Stock, (ii) \$0.60 by the Conversion Price applicable to such share for Series B Preferred Stock, (iii) \$1.55 by the Conversion Price applicable to such share for Series C Preferred Stock, (iv) \$8.00 by the Conversion Price applicable to such share for Series D Preferred Stock, (v) \$8.48 by the Conversion Price applicable to such share for Series E Preferred Stock, and (vi) \$0.243 by the Conversion Price applicable to such share for Series A-1 Preferred Stock, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share of Series A Preferred Stock shall be \$0.20, Series B Preferred Stock shall be \$0.60, Series C Preferred Stock shall be \$1.55, Series D Preferred Stock shall be \$8.00, Series E Preferred Stock shall be \$8.48, and Series A-1 Preferred Stock shall be \$0.243. Such initial Conversion Prices shall be subject to adjustment as set forth in Section 4(d).

(b) **Automatic Conversion.**

(i) **Series A-C Conversion.** Each share of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (A) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), the public offering price of which is not less than \$11.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds (net of underwriting discounts and commissions) of \$50,000,000 or (B) the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, voting together as a single class.

(ii) **Series D Conversion.** Each share of Series D Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (A) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act, the public offering price of which is not less than \$11.50 per

share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds (net of underwriting discounts and commissions) of \$50,000,000 or (B) the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding shares of Series D Preferred Stock, voting separately as a class.

(iii) **Series E Conversion.** Each share of Series E Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (A) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act, the public offering price of which is not less than \$11.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds (net of underwriting discounts and commissions) of \$50,000,000 or (B) the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding shares of Series E Preferred Stock, voting separately as a class.

(iv) **Series A-1 Conversion.**

(A) Each share of Series A-1 Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such share immediately upon the earlier of (1) except as provided below in Section 4(c), the Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act, the public offering price of which is not less than \$11.50 per share (appropriately adjusted for any stock split, dividend, combination or other recapitalization) and which results in aggregate cash proceeds (net of underwriting discounts and commissions) of \$50,000,000 or (2) the date specified by written consent or agreement of the holders of at least a majority of the then-outstanding shares of Series A-1 Preferred Stock, voting separately as a class.

(B) If any holder of Series A-1 Preferred Stock has defaulted on such holder's commitment to purchase shares of Series A-1 Preferred Stock pursuant to that certain Series A-1 Preferred Stock Purchase Agreement, dated on or about the date of this Restated Certificate of Incorporation, between the Corporation and certain stockholders named therein (the "Series A-1 Preferred Stock Purchase Agreement"), then on the date that is 5 days after such default, if such default has not been cured in full, each share of Series A-1 Preferred Stock held by such stockholder shall automatically be converted into one (1) share of Common Stock (appropriately adjusted for any stock split, dividend, combination or other recapitalization).

(c) **Mechanics of Conversion.** Before any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock shall be entitled to convert the same into shares of Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such series of Preferred Stock, and

shall give written notice to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of such series of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act the conversion may, at the option of any holder tendering such Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive Common Stock upon conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with Automatic Conversion provisions of subsections 4(b)(i)(B), 4(b)(ii)(B), 4(b)(iii)(B) and 4(b)(iv)(A)(2) above, such conversion shall be deemed to have been made on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date. If the conversion is in connection with Automatic Conversion provisions of subsection 4(b)(iv)(B), such holder of Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Preferred Stock or Common Stock; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such conversion occurred.

(d) **Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations.** The Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock, respectively, shall be subject to adjustment from time to time as follows:

(i) **Issuance of Additional Stock below Purchase Price.**

If the Corporation shall issue, on or after the date upon which this Restated Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware (the "Filing Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to the issuance of such Additional Stock, the

Conversion Price for such series in effect immediately prior to each such issuance shall automatically be adjusted as set forth in this Section 4(d)(i), unless otherwise provided in this Section 4(d)(i).

(A) **Adjustment Formula.** Whenever the Conversion Price is adjusted pursuant to this Section 4(d)(i), the new Conversion Price shall be determined by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (the "Outstanding Common") plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at such Conversion Price; and (y) the denominator of which shall be the number of shares of Outstanding Common plus the number of shares of such Additional Stock. For purposes of the foregoing calculation, the term "Outstanding Common" shall include shares of Common Stock deemed issued pursuant to Section 4(d)(i)(E) below.

(B) **Definition of "Additional Stock".** For purposes of this Section 4(d)(i), "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4(d)(i)(E)) by the Corporation after the Filing Date other than

(1) Shares of Common Stock issued pursuant to a transaction described in Section 4(d)(ii) hereof,

(2) All shares of Common Stock reserved for issuance pursuant to a stock option plan or restricted stock plan approved by two-thirds (2/3) of the members of the Board of Directors of the Corporation then in office,

(3) Capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings or similar transactions,

(4) Shares of Common Stock or Preferred Stock issuable upon exercise of warrants, notes or other purchase rights outstanding as of the date of this Certificate of Incorporation,

(5) Shares of Common Stock or Preferred Stock issuable pursuant to the Series A-1 Preferred Stock Purchase Agreement,

(6) Shares of Common Stock or Preferred Stock issued in connection with bona fide acquisitions, mergers or similar transactions, the terms of which are approved by two-thirds (2/3) of the members of the Board of Directors of the Corporation then in office,

(7) Shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock,

Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock,

(8) Shares of Common Stock issued or deemed issued pursuant to subsection 4(d)(i)(E) as a result of a decrease in the Conversion Price of any series of Preferred Stock resulting from the operation of Section 4(d), and

(9) Shares of Common Stock issued or issuable in a public offering prior to or in connection with which all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock will be converted to Common Stock.

(C) **No Fractional Adjustments.** No adjustment of the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments which are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three years from the date of the event giving rise to the adjustment being carried forward.

(D) **Determination of Consideration.** In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof. In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) **Deemed Issuances of Common Stock.** In the case of the issuance (whether before, on or after the Filing Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration

(determined in the manner provided in Section 4(d)(i)(D)), if any, received by the Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Section 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock, respectively, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities which remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4(d)(i)(E)(1) and 4(d)(i)(E)(2) shall be appropriately adjusted to reflect any change,

termination or expiration of the type described in either Section 4(d)(i)(E)(3) or 4(d)(i)(E)(4).

(F) No Increased Conversion Price.

Notwithstanding any other provisions of this Section 4(d)(i), except to the limited extent provided for in Sections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of the Conversion Price pursuant to this Section 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) Stock Splits and Dividends. In the event the

Corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series A-1 Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in Section 4(d)(i)(E).

(iii) Reverse Stock Splits. If the number of shares of

Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series A-1 Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event the Corporation shall

declare a distribution payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(ii), then, in each such case for the purpose of this Section 4(e), the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Preferred Stock are

convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(f) **Recapitalizations.** If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock shall thereafter be entitled to receive upon conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(g) **No Impairment.** The Corporation will not, without the appropriate vote of the stockholders under the General Corporation Law or Section 6 of this Article IV(B), by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(h) **No Fractional Shares and Certificate as to Adjustments.**

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. The number of shares issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock that the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting

forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for the Series A Preferred Stock, Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series A-1 Preferred Stock, respectively, at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and the Series A-1 Preferred Stock.

(i) **Notices of Record Date.** Upon (i) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, (ii) any Deemed Liquidation as defined in Article IV, (B), 2, (c) or any capital reorganization, or (iii) the occurrence of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, the Corporation shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock at least ten (10) days prior to the date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (B) the date on which any Deemed Liquidation or other such event as described in this Section 4(i) is expected to become effective and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Deemed Liquidation.

(j) **Reservation of Stock Issuable Upon Conversion.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of such series of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of such series of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) **Notices.** Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1

Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

5. **Voting Rights.**

(a) **General.** The holder of each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series A-1 Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) **Election of Directors.** (i) The holders of record of the shares of Series A Preferred Stock and Series B Preferred Stock, exclusively and voting together as a single class, shall be entitled to elect one (1) director of the Corporation, (ii) the holders of record of the shares of Series C Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation, (iii) the holders of record of the shares of Series D Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation, (iv) the holders of record of the shares of Series E Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation, (v) the holders of record of the shares of Series A-1 Preferred Stock, exclusively and as a separate class, shall be entitled to elect three (3) directors of the Corporation, (vi) the holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation, and (vii) the holders of Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect any remaining directors of this Corporation. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 5(b). The rights of the holders of each series of Preferred Stock under the first sentence of this Section 5(b) shall terminate on the first date following the date on which the original investors in such series of Preferred Stock no longer hold a majority of the shares of such series of Preferred Stock (subject to appropriate

adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares).

6. **Protective Provisions.**

(a) **Series A-1 Vote.** So long as any shares of Series A-1 Preferred Stock are outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A-1 Preferred Stock:

(i) effect a transaction described in Section 2(c)(i) above;

(ii) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock so as to affect adversely the shares of such series, respectively;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock;

(iv) except for shares of Series A-1 Preferred Stock, authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible into or exercisable for any equity security, having a preference over, or being on a parity with, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series A-1 Preferred Stock with respect to voting, dividends, conversion or upon liquidation;

(v) effect a reclassification or recapitalization of the outstanding capital of the Corporation;

(vi) amend the certificate of incorporation or bylaws of the Corporation in a manner which adversely affects the rights, preferences or privileges of the holders of the Preferred Stock;

(vii) issue principal amount of indebtedness for borrowed money in excess of five million dollars (\$5,000,000.00) and excluding (A) equipment, capital lease or other commercial leasing arrangements, or (B) receivables-backed lending arrangements; and

(viii) declare or pay dividends with respect to any class of capital stock of the Corporation (other than repurchases of shares or options to purchase shares held by departing employees or pursuant to rights of repurchase pursuant to the Corporation's employee stock option plan or otherwise held by the Corporation pursuant

to written agreements in effect as of the date this Restated Certificate of Incorporation is filed with the Delaware Secretary of State;

(ix) change the size of the Corporation's Board of Directors;

(x) repurchase or redeem any shares of Series A, B, C, D, E or A-1 Preferred Stock; and

(xi) amend the Certificate of Incorporation or Bylaws of the Corporation in a manner which materially and adversely affects the holders of Series A-1 Preferred Stock.

(b) **Series D Vote.** So long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series D Preferred Stock

(i) alter or change the rights, preferences or privileges of the shares of Series D Preferred Stock so as to affect adversely the shares of such series in a manner differently than any other series of Preferred Stock;

(ii) repurchase or redeem any shares of Series A, B or C Preferred Stock; and

(iii) amend the Certificate of Incorporation or Bylaws of the Corporation in a manner which materially adversely affects the holders of Series D Preferred Stock in a manner differently than the other series of Preferred Stock.

(c) **Series E Vote.** So long as any shares of Series E Preferred Stock are outstanding, the Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series E Preferred Stock

(i) alter or change the rights, preferences or privileges of the shares of Series E Preferred Stock so as to affect adversely the shares of such series;

(ii) repurchase or redeem any shares of Series A, B, C or D Preferred Stock;

(iii) amend the Certificate of Incorporation or Bylaws of the Corporation in a manner which materially and adversely affects the holders of Series E Preferred Stock; and.

(iv) so long as at least fifty percent (50%) of the shares of the authorized Series E Preferred Stock remain outstanding, authorize or issue, or obligate itself to issue, any other equity security, including any other security convertible

into or exercisable for any equity security, having a preference over the Series E Preferred Stock with respect to voting, dividends, conversion or upon liquidation.

7. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

(C) **Common Stock.**

1. **Dividend Rights.** Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. **Liquidation Rights.** Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of Article IV(B).

3. **Redemption.** The Common Stock is not redeemable at the option of the holder.

4. **Voting Rights.** The holder of each share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

ARTICLE VII

(A) To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be

personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

(B) The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

(C) Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

The foregoing Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware.

[Remainder of page intentionally left blank.]

Executed this 14th day of April, 2008.

/s/ Scott VanDeVelde

Scott VanDeVelde, President and CEO

October 15, 2008

JellyCloud, Inc. (f/k/a Claria Corporation and The Gator Corporation))	NOTICE OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS AND DEADLINE FOR SUBMITTING CLAIMS
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)	
)	
)	
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)	

TO ALL CREDITORS AND EQUITYHOLDERS OF JELLYCLOUD, INC. (F/K/A CLARIA CORPORATION AND THE GATOR CORPORATION) AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on September 30, 2008, JellyCloud, Inc. (f/k/a Claria Corporation and The Gator Corporation) ("JellyCloud"), a Delaware corporation, as assignor, made a General Assignment for the Benefit of Creditors (the "Assignment") to Jellycloud (assignment for the benefit of creditors), LLC ("Assignee"), a California limited liability company, as assignee, pursuant to common law of the State of California. Please note that with the exception of the relationship created by the Assignment, and despite their similarity in name, Assignor and Assignee have no corporate affiliation to each other. A true and correct copy of the document evidencing the Assignment is enclosed. Pursuant to the Assignment, JellyCloud transferred ownership of all of its rights in tangible and intangible assets (collectively, the "Assets") to Assignee for liquidation. Assignee shall liquidate the Assets, wind down JellyCloud, and distribute the net liquidation proceeds to creditors of JellyCloud who timely submit claims as instructed below.

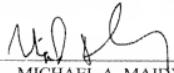
PLEASE TAKE FURTHER NOTICE that all entities asserting any claim against JellyCloud, Inc. must submit a proof of claim and proper supporting documentation to the addressee listed below no later than March 30, 2009. A proof of claim form is enclosed with this Notice. Claims shall be presented by mailing them or sending them by facsimile to the Assignee as follows:

Jellycloud (assignment for the benefit of creditors), LLC
In its sole and limited capacity as Assignee
for the Benefit of Creditors of JellyCloud, Inc.
P.O. Box 391600
Mountain View, California 94039-1600
United States
+1 858 762-4066 Telephone
+1 650 412-2521 Facsimile

PLEASE TAKE FURTHER NOTICE that any claimant who fails to timely submit a Claim in accordance with the instructions set forth above shall be barred from sharing in any distribution of proceeds of the liquidation of the Assets of JellyCloud and shall not receive any payment from the Assignee.

Dated: 10/15/2008

Jellycloud (assignment for the benefit of creditors),
LLC, in its sole and limited capacity as assignee for
the benefit of creditors of JellyCloud, Inc.

By: 

MICHAEL A. MAIDY, Manager

Assignment for the Benefit of Creditors of JellyCloud, Inc. (f/k/a Claria Corporation and The Gator Corporation)		PROOF OF CLAIM	DATE RECEIVED:		
JellyCloud, Inc. (f/k/a Claria Corporation and The Gator Corporation) Assignor,					
Jellycloud (assignment for the benefit of creditors), LLC Assignee.					
Name of Claimant (The person or entity to whom JellyCloud, Inc. (f/k/a Claria Corporation and The Gator Corporation) owes money or property)	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. SOCIAL SECURITY OR TAX I.D. #: _____ Name and Address Where Notices Should be Sent Telephone Number _____ ACCOUNT OR OTHER NUMBER BY WHICH CLAIMANT IDENTIFIES CLAIM: _____				
	<input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you on behalf of the Assignee. THIS SPACE IS FOR OFFICIAL USE ONLY				
1. BASIS FOR CLAIM	<input type="checkbox"/> replaces <input type="checkbox"/> Check here If this claim amends a previously filed claim, dated _____ 2. IS YOUR CLAIM <input type="checkbox"/> Matured (i.e., due and payable) <input type="checkbox"/> Unmatured <input type="checkbox"/> Disputed <input type="checkbox"/> Contingent				
3. DATE DEBT WAS INCURRED:	4. IF COURT JUDGMENT, DATE OBTAINED:				
5. CLASSIFICATION OF CLAIM: Classify your claim as follows: (1) Unsecured, (2) Secured, or (3) Partially secured and partially unsecured (it is possible for part of a claim to be in one category and part in another): CHECK THE APPROPRIATE BOX OR BOXES that best describes your claim and STATE THE AMOUNT OF THE CLAIM. <input type="checkbox"/> UNSECURED CLAIM \$ _____ A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim. <input type="checkbox"/> SECURED CLAIM \$ _____ Attach evidence of perfection of security interest. Brief Description of Collateral: _____ Amount of arrearage and other charges included in secured claim above, if any \$ _____					
7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests, if the documents are not available, explain. If the documents are voluminous, attach a summary. 8. STATEMENT ABOUT THE DEBT: Attach a written detailed explanation of the basis of your claim. Include with your explanation a schedule of calculations showing precisely how you arrive at the total amount of your claim. 9. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim, and in filing this claim, claimant has deducted all amounts that claimant owes to debtor.					
6. PRIORITY CLAIM \$ _____ State basis for priority: _____					
10. TOTAL AMOUNT OF CLAIM ON DATE \$ _____ SIGNED BELOW: _____ (Unsecured) \$ _____ (Secured) \$ _____ (Total) <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.	THIS SPACE IS FOR OFFICIAL USE ONLY				
11. DATE-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. 12. BY MY SIGNATURE BELOW, I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION PROVIDED HEREIN AND ATTACHED HERETO IS TRUE AND CORRECT.					
Date _____	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)				

GENERAL ASSIGNMENT

This Assignment is made as of the 30th day of September, 2008, by JellyCloud, Inc. a Delaware corporation, with offices at 555 Broadway Street, Redwood City, CA 94063, hereinafter referred to as "Assignor", to Jellycloud (assignment for the benefit of creditors), LLC, a California limited liability company, hereinafter referred to, along with any successors and assigns, as "Assignee".

RECITALS

WHEREAS, Assignor has determined that, based upon its business prospects, entering into this Assignment is in the best interests of the Assignor's creditors; and

WHEREAS, Assignor believes that Assignee is well qualified to efficiently administer the Assignment for the benefit of the Assignor's creditors;

NOW, THEREFORE, for valuable consideration, the receipt of which is duly acknowledged, the parties agree as follows:

AGREEMENT

1. Assignment of Assets.

(a) Assignor, for and in consideration of the covenants and agreements to be performed by Assignee, as hereinafter contained, and for good and valuable consideration, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, convey and transfer to Assignee, its successors and assigns, in trust, for the benefit of Assignor's creditors generally, all of the property of Assignor of every kind and nature and wheresoever situated, both real (but not facility lease arrangements) and personal, and any interest or equity therein not exempt from execution, including, but not limited to, all that certain stock of merchandise, equipment, furniture, fixtures, accounts, books, cash on hand, cash in bank, deposits, patents, copyrights, trademarks and trade names and all associated goodwill, source codes, software, and related documentation, insurance policies, and choses in action that are legally assignable, together with the proceeds of any existing non-assignable choses in action that may hereafter be recovered or received by Assignor. Assignor agrees to execute such additional documents as shall be necessary to accomplish the purposes of this Assignment.

(b) This Assignment specifically includes and covers all claims for refund or abatement of all excess taxes heretofore or hereafter assessed against or collected from Assignor by the U.S. Treasury Department or any other taxing agency, and Assignor agrees to sign and execute power of attorney or such other documents as required to enable Assignee to file and prosecute, compromise and/or settle, all such claims before the Internal Revenue Service, U.S. Treasury Department or any other taxing or other Governmental agency.

(c) Assignee is to receive said property, conduct said business, should it deem it proper, and is hereby authorized at any time after the signing hereof by Assignor to sell and dispose of said property upon such time and terms as it may see fit, and is to pay to creditors of Assignor pro rata, the net proceeds arising from the conducting of said business and sale and disposal of said property, after deducting all moneys which Assignee may at its option pay for the discharge of any lien on any of said property and any indebtedness which under the law is entitled to priority of payment, and all expenses, including a reasonable fee to Assignee and its attorneys. In the event that funds are remaining after payment of all of Assignee's expenses and payment of all allowed creditor claims, Assignee will distribute the remaining funds to Assignor's stockholders pursuant to and in accordance with the respective liquidation preferences set forth in the Assignor's Certificate of Incorporation, as amended.

2. Payment of Fees. Assignee shall be entitled to be paid the fees and recover the costs set forth in the Compensation and Expense Reimbursement Agreement dated as of the date hereof between the Assignor and the Assignee (the "Fee Letter").

3. Appointment of Agents. Assignee is authorized and empowered to appoint and compensate such agents, field representatives and/or attorneys and/or accountants as it may deem necessary, and such agents and/or field representatives shall have full power and authority to open bank accounts in the name of Assignee or its nominees or agents and to deposit assigned assets or the proceeds thereof in such bank accounts and to draw checks thereon and with the further power and authority to do such other acts and to execute such papers and documents in connection with this Assignment as Assignee may consider necessary or advisable.

4. Certain Acknowledgments Regarding Transfer. Assignor acknowledges that certain of the assets being assigned under this General Assignment may be subject to restrictions on the use or transfer of such assets, the unauthorized use or transfer of which may result in further damages or claims. Such assets may include, without limitation, intellectual property rights of the Assignor (e.g., trade names, service names, registered and unregistered trademarks and service marks and logos; internet domain names; patents, patent rights and applications therefor, copyrights and registrations and applications therefor; software and source code (and software licenses with respect thereto); customer lists and customer information; know-how, trade secrets, inventions, discoveries, concepts, ideas, methods, processes, designs, formulae, technical data, drawings, specifications, data bases and other proprietary assets (collectively, "Intellectual Property")). Assignor represents and warrants that its officers, directors, shareholders, employees, agents, customers and other third parties have been advised not to use, remove or cause a transfer (other than pursuant to this General Assignment) of any of the assets of Assignor, including without limitation the Intellectual Property, either prior or subsequent to this General Assignment, except as expressly authorized in writing in advance, which written authorization is not inconsistent with or otherwise may constitute a breach of any other written agreement. Except as authorized in writing, which has been disclosed in writing to Assignee, Assignor further represents and warrants that no asset (including, without limitation, the Intellectual Property) has

been transferred, used, or removed, in whole or in part, in a manner that interferes with the rights and interests of a third party(ies) in such asset or otherwise may constitute a breach of any contract with such third party(ies).

5. Representations and Warranties of the Assignor. Assignor represents and warrants to Assignee that as of the date hereof:

(a) Assignor has all requisite power and authority to execute, deliver and perform its obligations under this Assignment, including, without limitation, to transfer the property transferred to the Assignee hereby;

(b) the execution, delivery and performance by the Assignor of this Assignment has been duly authorized by all necessary corporate and other action and does not and will not require any registration with, consent or approval of, or notice to or action by, any person (including any governmental authority) in order to be effective and enforceable;

(c) this Assignment constitutes the legal, valid and binding obligation of the Assignor, enforceable against it in accordance with their respective terms; and

(d) all claims for wages, expense reimbursements, benefits and other compensation with priority over the Assignor's other creditors pursuant to California Code of Civil Procedure § 1204 accrued or otherwise arising prior to the date hereof have been paid in full.

6. Resignation and Replacement of Assignee. The Assignee may resign and be discharged from its duties hereunder at any time; provided that such resignation shall not become effective until a successor Assignee has been appointed by the resigning Assignee and such successor has accepted its appointment in writing delivered to the resigning Assignee. Any successor Assignee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver one counterpart thereof to the resigning Assignee. Thereupon such successor Assignee shall, without any further act, become vested with all the estate, properties, rights, powers, trusts, and duties of his predecessor in connection with the Assignment with like effect as if originally named therein, but the resigning Assignee shall nevertheless, when requested in writing by the successor Assignee, execute and deliver an instrument or instruments conveying and transferring to such successor Assignee all of the estates, properties, rights, powers and trusts of such resigning Assignor in connection with the Assignment, and shall duly assign, transfer, and deliver to such successor Assignee all property and money held by it hereunder.

7. Limitation of Liability. Assignor acknowledges that Assignee is acting solely as Assignee in connection with this Assignment and not in its personal capacity. As a result, Assignor expressly agrees that Assignee, its members, officers and agents shall not be subject to any personal liability whatsoever to any person in connection with the affairs of this Assignment, except for its own misconduct knowingly and intentionally committed in bad faith. No provision of this Agreement shall be construed to relieve the

Assignee from liability for its own misconduct knowingly and intentionally committed in bad faith or gross negligence, except that:

(a) The Assignee shall not be required to perform any duties or obligations except for the performance of such duties and obligations as are specifically set forth in this Assignment, and no implied covenants or obligations shall be read into this Assignment against the Assignee.

(b) In the absence of bad faith or gross negligence on the part of the Assignee, the Assignee may conclusively rely, as to the truth, accuracy and completeness thereof, on the statements and certificates or opinions furnished to the Assignee by the Assignor and conforming to the requirements of this Assignment.

(c) The Assignee shall not be liable for any error of judgment made in good faith except for gross negligence.

(d) The Assignee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with a written opinion of legal counsel addressed to the Assignee.

8. Reliance.

(a) The Assignee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The Assignee may consult with legal counsel to be selected by it, and the Assignee shall not be liable for any action taken or suffered by it in accordance with the advice of such counsel.

(c) Persons dealing with the Assignee shall look only to the assignment estate to satisfy any liability incurred by the Assignee in good faith to any such person in carrying out the terms of this Assignment, and the Assignee shall have no personal or individual obligation to satisfy any such liability.

9. Headings. The headings used in this Assignment are for convenience only and shall be disregarded in interpreting the substantive provisions of this Assignment.

10. Forwarding of Mail. Assignor authorizes the forwarding of its mail by the U.S. Postal Service as directed by Assignee.

11. Counterparts. This Assignment agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

12. Attorneys fees and costs. Except as set forth in the Fee Letter, the parties agree that each of them shall bear its own legal costs and expenses in connection with the negotiation, drafting, execution or enforcement of this Assignment.

13. Entire Agreement. This Assignment and the Fee Letter contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement, representation, warranty or promise made prior hereto or contemporaneously herewith by any party hereto, or any employee, officer, agent, or attorney of any party hereto shall be valid or binding or relied upon by any party as an inducement to enter into, or as consideration for, this Assignment.

IN WITNESS WHEREOF the parties hereunder set their hands the day and year first above written.

Assignor's Federal Tax I.D. Number:

Federal # 94-3303021

JELLYCLOUD, INC., a Delaware
Corporation, Assignor

By:

Its:

MWJ
PRESIDENT & CEO

Jellycloud (assignment for the benefit
of creditors), LLC, a California limited
liability company, Assignee

By:

Its:

MWJ
Manager